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TOMORROWNOW, INC.

20 UNITED STATES DISTRICT COURT

21 NORTHERN DISTRICT OF CALIFORNIA

22 OAKLAND DIVISION

23
24 ORACLE USA, INC., *et al.*,
25 Plaintiffs,
26 v.
27 SAP AG, *et al.*,
28 Defendants.

No. 07-CV-01658 PJH (EDL)

**[PROPOSED] ORDER GRANTING
IN PART ORACLE'S MOTION TO
MODIFY THE PROTECTIVE
ORDER**

1 On January 26, 2010, the Court held a hearing on Plaintiffs' motion to modify the
 2 Protective Order. After consideration of the briefs and supporting documents submitted by the
 3 parties and the argument of counsel, the Court orders as follows:

4 1. The Protective Order in this action is modified as follows:

5 Notwithstanding the confidentiality restrictions in the Protective Order that are applicable to
 6 Confidential or Highly Confidential Discovery Material produced in this action, to the extent
 7 provided herein, counsel for Plaintiffs and/or for their affiliates may use Discovery Material
 8 produced in this action that is designated as "Confidential Information" or "Highly Confidential
 9 Information – Attorneys Eyes Only" for purposes of investigating and preparing litigation,
 10 including for copyright infringement, against Defendants and/or their affiliates (the "potential
 11 European litigation"). Likewise, to the extent provided herein, counsel for Defendants and/or for
 12 their affiliates may use Discovery Materials produced in this action that are designated as
 13 "Confidential Information" or "Highly Confidential Information – Attorneys Eyes Only" for
 14 purposes of investigating and preparing defense strategies to the potential European litigation.

15 2. The following individuals shall have access to "Confidential Information"
 16 or "Highly Confidential Information – Attorneys Eyes Only" Discovery Materials for purposes
 17 of investigating and preparing the potential European litigation, and defense strategies thereto,
 18 described in paragraph 1 above:

19 (a) The parties' in-house and outside counsel who are authorized to
 20 receive Confidential or Highly Confidential Discovery Materials under the Protective Order as it
 21 existed prior to this modification;

22 (b) Up to a total of two (2) additional in-house counsel for Plaintiffs
 23 and/or Plaintiffs' affiliates, and up to a total of two (2) additional in-house counsel for
 24 Defendants and/or Defendants' affiliates. Each party will identify said in-house counsel to the
 25 other by email prior to the additional in-house counsel's receipt of Confidential or Highly
 26 Confidential Discovery Materials. Either party may replace either or both of these additional in-
 27 house counsel for purposes of having access to Confidential or Highly Confidential Discovery
 28 Materials if said in-house counsel leaves the employ of that party or is removed from handling

1 the potential European litigation. Consent to any in-house counsel obtaining access pursuant to
2 this paragraph will be deemed given by the other parties if objection is not made within seven
3 business days of their being identified, however, the parties reserve the right to challenge access
4 based on later-acquired information; and

5 (c) Outside counsel for the potential European litigation. Such outside
6 counsel for the potential European litigation shall execute a Declaration of Compliance and serve
7 it on counsel for all parties pursuant to paragraph 18 of the Protective Order prior to their receipt
8 of Discovery Material designated as “Confidential Information” or “Highly Confidential
9 Information – Attorneys Eyes Only.”

10 3. All other confidentiality restrictions in the Protective Order remain intact.

11 4. Any party to this Protective Order may move for a further modification of
12 the Protective Order to allow for use of, or greater access to, the Discovery Materials that were
13 produced in this action and that have been designated Confidential or Highly Confidential to file,
14 prosecute and/or defend the litigation contemplated in paragraph 1 above, and this order is
15 without prejudice to such a motion or opposition to such a motion.

16 IT IS SO ORDERED.

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18 Dated: _____, 2010. _____

19 Hon. Elizabeth D. Laporte
20 United States Magistrate Judge

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